



State of Alabama Department of Revenue

Montgomery, Alabama 36132

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TO:

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: January 12, 1996

RE: Revenue Ruling 95-004

ISSUES AND FACTS

Corporation "A" proposes to undertake an expansion project at its existing mill in an Alabama County. The project consists of the installation of additional machinery, the construction of related buildings and the acquisition and installation of related equipment.

The Industrial Development Board for the City where the mill is located authorized and entered into an Inducement and Abatement Agreement with Corporation "A" on March 1, 1995, pursuant to Act 92-599. Corporation "A" then submitted an Application for Abatement of Sales and Use Taxes to the Alabama Department of Revenue. The request for a revenue ruling concerns whether the use of certain procurement procedures involving "all purchases of machinery, equipment and construction materials, equipment and supplies in connection with the Project, the cost of which may be added to a capital account with respect to the Project (whether capitalized or treated as current expenses)...[,] will be exempt from sales and use tax as provided in the Act."

The first set of procedures involves agents appointed by Corporation "A" who purchase materials by issuing purchase order in the name of Corporation "A" as purchaser. Such purchases made by agents for Corporation "A" will be paid for by a direct payment by Corporation "A".

The second set of procedures involves the purchase of materials from a contractor by an intermediary for resale to Corporation "A". The intermediary will in no way be involved in the installation of

the materials or the use of the materials in making additions or improvements to realty. Under a separate contract Corporation "A" will furnish the materials back to the contractor who will install the materials into the construction Project.

LAW AND ANALYSIS

As described by Corporation "A" in its request, the first set of procedures involving the use of purchasing agents is consistent with the guidelines established by the Department. However, strict adherence to the described procedures must be observed. A valid abatement agreement must be in existence as authorized by Act 92-599. All purchases by the duly appointed agents of Corporation "A" must be made in the name of Corporation "A" and paid for directly by Corporation "A".

The second set of procedures, involving the use of intermediaries, would likewise exempt the purchase of the materials from sales and use tax, so long as the described procedures are strictly followed. Since the contractor will actually sell the purchased materials to an intermediary, or third party, and not to Corporation "A", the materials will still be exempt from tax, even though the contractor installs the materials, or makes additions to realty using the materials, pursuant to a contract with Corporation "A" for said installation.

HOLDING

The purchase of materials for use in a project which has been granted a valid abatement pursuant to Act 92-599, codified at §40-9B-1 et seq., is exempt from sales and use tax when the materials are purchased in the name of Corporation "A" and paid for directly by Corporation "A". Such purchases of materials are also exempt from sales and use tax when purchased by the contractor for resale to an intermediary who sells the materials to Corporation "A" who then furnishes the materials to the contractor for installation pursuant to a separate installation only contract.



RALPH P. EAGERTON, JR.
Commissioner of Revenue